

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD JACKSON,

Defendant-Appellant.

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UNPUBLISHED  
February 21, 2003

No. 238563  
Mason Circuit Court  
LC No. 01-016829-FH

Before: Kelly, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

Defendant was convicted of OUIL, third offense, MCL 257.625(1), and possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). He was sentenced to one year in jail, with eleven months to be served initially, followed by two years' probation. He appeals as of right, challenging his sentence as a departure from the guidelines for OUIL offenses. We affirm.

Defendant argues that the trial court erred in failing to recognize that it was departing from the legislative sentencing guidelines when, although the guidelines range was zero to eleven, it sentenced defendant to a total jail term of twelve-months.

Defendant was sentenced under the Motor Vehicle Code. MCL 257.625(8)(c) provides:

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

The sentencing guidelines statute specifically addresses sentences under the vehicle code. MCL 769.34(2)(a) provides in part:

If the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section.

Thus, defendant's sentence was not a departure and the court was not required to articulate substantial and compelling reasons for the sentence.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Helene N. White  
/s/ Joel P. Hoekstra